



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JANUARY 26, 2023

IN THE MATTER OF:

Appeal Board No. 626280

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 626278, 626279 and 626280, the employer appeals from the decisions of the Administrative Law Judge filed October 5, 2022, insofar as they overruled the initial determinations disqualifying the claimant from receiving benefits, effective April 23, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$8,346 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4) and \$5,700 in Federal

Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,106.90 on the basis that the claimant made a willful misrepresentation to obtain benefits.

The Administrative Law Judge held combined telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked fulltime as a Parks Opportunity Program (POP) worker for the City of New York from February 2020 until April 22, 2021. The POP is a program is designed to provide individuals with on-the-job training preparing them to obtain permanent full-time employment. The

claimant's job was outside and his responsibilities included various duties of cleaning and maintaining parks in the NYC area. The claimant typically worked 7 am to 3:30 pm, Monday through Friday. The claimant was required to meet with his career coach biweekly to discuss his performance and any issues he was having. The meetings would typically last 15-30 minutes. The claimant was initially accepted into the program for a six-month period. Due to continued funding for the program, the claimant's position was extended every 30 days until April 22, 2021. Each month the employer would email the claimant notifying him of the extension, requesting a signature from the claimant. The claimant did not receive an email extending his job beyond April 22, 2021.

On April 13, 2021, during a biweekly meeting with the claimant, the career coach discussed continuing employment for him by transitioning from a POP worker into the City Cleaning Corps Program as a City Seasonal Aide (CSA). The claimant was told that his duties would remain the same but that his title would change due to the funding of the program. The job was also performed outside. The CSA position was to end sometime in June 2021.

On April 21, 2021, the claimant's supervisor notified him that he had been assigned as a CSA, effective April 11, 2021. The claimant emailed his career coach requesting more information. The career coach notified him that he had been assigned as a CSA with the City Cleaning Corps Program and asked if he was interested. The claimant responded stating that if it is the same pay as a POP worker, he did not want it. The career coach replied that he could submit a resignation. The claimant stopped reporting to work and was contacted by his career coach inquiring why he was not at work. The claimant notified his career coach that he did not want the CSA position because it was not an increase in his pay. The claimant was again told that if he did not want the position he could submit a resignation. The claimant resigned.

The claimant filed an original claim for benefits on May 3, 2021 and reported that he was laid off due to lack of work. The claimant received \$8,346 in regular unemployment insurance benefits and \$5,700 in FPUC benefits.

**OPINION:** The credible evidence establishes that the claimant voluntarily separated from continuing employment on April 22, 2021, because he was dissatisfied with his pay rate as a CSA. The claimant was aware that there was continuing employment available under the same terms and conditions except that his job title would change. Although the claimant contends that he was never offered the CSA position, the claimant admittedly had spoken to his

career coach on April 13, 2021 about the opportunity and refused the offer on April 21, 2021 when he told his career coach that he did not want it if there was no increase in pay. We note that there is no other cause of the claimant's decision to quit when he did, other than his dissatisfaction of not getting a pay increase. Although the claimant contends that he also did not accept the CSA position due to COVID-19 concerns, both positions were performed outside and involved the same duties. There is no evidence that the CSA position would increase his exposure to COVID-19. For unemployment purposes, a dissatisfaction with wages does not establish good cause to quit (see Matter of Scoville, 49 AD3d 1130 [3d Dept 2008]; Appeal Board No. 568035). Accordingly, the claimant's voluntary separation was without good cause, and he separated from his employment under disqualifying circumstances.

As the claimant is disqualified, the benefits that he received were overpaid. The claimant's certification that he was laid off due to lack of work, when he was aware that he resigned, was factually false. Accordingly, we conclude that the regular unemployment insurance benefits in the amount of \$8,346 received by the claimant are recoverable. Pursuant to Federal law, the overpaid FPUC benefits in the amount of \$5,700 are also recoverable.

The credible evidence further establishes that the claimant made a willful misrepresentation to collect benefits on May 3, 2021. Here, the claimant knew continuing work was available to him when he resigned from his employment. A willful misrepresentation is considered willful if it was knowingly made and does not imply

and intent to defraud. Accordingly, we conclude that when the claimant reported that his separation was due to lack of work, when he knew that he had resigned from continuing work that was available, he made a willful misrepresentation to receive benefits, and he is therefore subject to the forfeiture penalty of eight effective days and the civil penalty of \$2,106.90.

**DECISION:** The decisions of the Administrative Law Judge, insofar as appealed from, are reversed.

In Appeal Board Nos. 626278, 626279 and 626280, the initial determinations, disqualifying the claimant from receiving benefits, effective April 23, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$8,346 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4)

and \$5,700 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,106.90 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER